

60-1566

11 FEB 1960

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Restricted Data Clearances

1. This memorandum contains a recommendation submitted for approval by the Director of Central Intelligence. Such recommendation is contained in paragraph 4.
2. As you are aware, this Office, together with the Offices of Security and Scientific Intelligence, has for sometime been seeking ways to eliminate the need for a second separate investigation in connection with each Restricted Data clearance. The Atomic Energy Commission grants "Q" clearances, which must, under the law, be based upon security investigation by the Civil Service Commission. The Department of Defense, by contrast, has statutory authority to grant Restricted Data clearances based upon its own investigations, as does the National Aeronautics and Space Administration. Similar authority for the Coast Guard has been submitted to the Congress for consideration during the present session.
3. Attached is a more detailed account of our past consideration of this matter. You will note that the Atomic Energy Commission has not taken up any great initiative in the furtherance of our objective.
4. I continue to believe that the requirement of a second investigation by a different agency as a precondition to granting Agency employees Restricted Data clearances is a costly, inefficient, and unnecessary duplication of administrative effort, and I therefore recommend that you approve action by the Legislative Counsel to initiate discussions with the Bureau of the Budget and the Joint Committee on Atomic Energy looking toward introduction of appropriate legislation in the Congress.

OGC:HRC:jem

JOHN S. WAGNER
Legislative Counsel

CONCURRENCES:

See Memo from OSI

Office of Scientific Intelligence

19 February 1960

Date

See Memo from Acting Director/Security

Office of Security

17 February 1960

Date

The recommendation in paragraph 4 is approved.

Date

Orig & 1 - Legislative Counsel

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Approved For Release 2003/04/18 : CIA-RDP80B01676R003400130032-8

Allen W. Dulles
Director

**BACKGROUND MATERIAL
RESTRICTED DATA CLEARANCE LEGISLATION**

11 February 1960

1. Atomic Energy Commission Clearances.

The present provisions of law governing the granting of security clearances by the Atomic Energy Commission, in connection with access to Atomic Energy Restricted Data, are found in Sec. 145 of the Atomic Energy Act of 1954, as amended. Under these provisions, employees, contractors, etc., of the Atomic Energy Commission may not be granted access to Restricted Data until:

1. The Civil Service Commission has made an investigation as to the character, associations, and loyalty of the individuals (according to standards and specifications established by the Atomic Energy Commission), and

2. The Atomic Energy Commission has made a determination that permitting the individual to have access to Restricted Data "will not endanger the common defense and security." This determination is referred to as "Q" Clearance.

Under subsections 145a, d, and e, investigations are conducted by the Federal Bureau of Investigation in those instances where derogatory information is developed by the Civil Service Commission, where the President deems a Federal Bureau of Investigation investigation to be in the national interest, and where the Atomic Energy Commission certifies that the position is of a high degree of sensitivity. As a practical matter, this means that a great many "Q" clearances are based on full field investigation by the Federal Bureau of Investigation.

2. Department of Defense Clearances.

Under Sec. 143 of the Atomic Energy Act, as amended, the Atomic Energy Commission may authorize its employees and other holders of "Q" Clearances to permit Department of Defense employees, contractors, etc., and members of the Armed Forces, to have access to Restricted Data, upon:

1. A determination by the head of the appropriate Department of Defense agency head, or his designee, that such access will not endanger the common defense and security, and

2. A certification by the appropriate official that the Restricted Data is required in the performance of the duties of that person to whom access has been granted.

In connection with the former determination, the Department of Defense is relieved of the requirement of referring to the Civil Service Commission for the investigation and evaluation of security factors so long as the procedures and standards used are in reasonable conformance with those established by the Atomic Energy Commission under Sec. 145. This eliminates the duplication which is involved where the Civil Service Commission makes the investigation for the Restricted Data clearance (under Sec. 145) and some other agency makes the ordinary security clearance.

3. National Aeronautics and Space Administration Clearances.

By means of statutory language borrowed from Sec. 143 of the Atomic Energy Act, the National Aeronautics and Space Administration has essentially the same authority as the Department of Defense with respect to granting access to Restricted Data - that is, to grant access upon:

1. A determination by the National Aeronautics and Space Council or the National Aeronautics and Space Administrator that granting such access will not endanger the common defense and security, and

2. A certification by the National Aeronautics and Space Council or the National Aeronautics and Space Administrator that the Restricted Data is required in the performance of the duties of the persons to whom access has been granted.

This language is found in Sec. 304(b) of the National Aeronautics and Space Act of 1958. The provision also allows the National Aeronautics and Space Administration employees to exchange Restricted Data with persons holding Department of Defense clearances under Sec. 143 of the Atomic Energy Act.

4. Exchange of Restricted Data

There appear to be no particular problems growing out of legal restrictions on the exchange of Restricted Data between holders of "Q" Clearances. The same is not true as to non-holders of "Q" Clearances. These people must, with one exception, look to the Atomic Energy Commission for specific authority in order to gain access to Restricted Data. As indicated in paragraphs 2 and 3 above, under both Sec. 143 of the Atomic Energy Act and Sec. 304 of the National Aeronautics and Space Act, the Atomic Energy Commission may grant to any person holding a "Q" Clearance authority to permit employees of the Department of Defense and National Aeronautics and Space Administration, respectively, to have access to Restricted Data. The conditions to such permission are that the person to whom access is granted must hold a Restricted Data clearance and a certification of need to know from his own agency. In Appendix 2138-031 of the Atomic Energy Commission Manual, authority to permit access to Restricted Data by Department of Defense personnel is granted by the Atomic Energy Commission (under Sec. 143 of the Atomic

Energy Act) to 25 top-level officials. The Director of Central Intelligence is one of these. The exception, mentioned above, to the ultimate exclusiveness of Atomic Energy Commission authority to grant access to Restricted Data is that in Sec. 304b of the National Aeronautics and Space Act there is a direct grant of authority to holders of National Aeronautics and Space Administration clearances to permit access to Restricted Data in their possession by holders of Department of Defense clearances. (There appears to be no authority for the reverse process.)

5. Mechanics of Exchange with the Department of Defense.

The basic document used in Restricted Data exchange with Department of Defense personnel is Atomic Energy Commission Form 277, Request for Visit or Access Approval. This form carries on its face statements of the Department of Defense clearance and the need-to-know certification mentioned above. The approval of this form constitutes the permitting of access authorized by Sec. 143 of the Atomic Energy Act. The overall exchange system has apparently proved workable, although there is some feeling that the number of Form 277's required is burdensome. Nevertheless, some anomalous situations have developed, two of which are described below:

a. Under Sec. 143 of the Atomic Energy Act and regulations pursuant to it, the Director of Central Intelligence may grant Restricted Data access to a Department of Defense employee holding a Department of Defense clearance and a certification of need to know. Our own employees would need a "Q" Clearance for access to the same data - that is, would have to look outside of the Agency, to the Atomic Energy Commission, for authority to have access.

b. The present state of law permits the holder of a Department of Defense clearance to pass information to a holder of a "Q" Clearance almost without restriction. But a "Q" cleared employee of the Central Intelligence Agency is only permitted to pass information to a Department of Defense employee who possesses an approved certification in addition to his Department of Defense clearance. Thus, a Department of Defense representative may lend documents to the Central Intelligence Agency one day and return for them the next only to discover that there is no authority permitting the documents to be returned to him.

6. Legislative Efforts Through the Atomic Energy Commission.

a. On 17 January 1958 we forwarded to the Atomic Energy Commission draft legislation designed to reduce the problems involved in authorizing access to Restricted Data by Agency personnel requiring such material in connection with their official duties. The proposal was

particularly aimed at obviating the duplication of effort and expense involved in the present investigative procedures and at facilitating interchange between personnel of this Agency granted access to Restricted Data and personnel of other agencies, particularly in the Department of Defense, who are also authorized access to the same material. The present state of the law requires that our personnel be given a complete investigation by the Civil Service Commission or the Federal Bureau of Investigation prior to any clearance for access to Restricted Data. Fulfilling this requirement is an obvious duplication of the investigative procedures which, in nearly every case, would have already been accomplished in connection with the individual's normal Agency clearance. Further, once cleared by the Atomic Energy Commission and granted access to Restricted Data, our employees can not then exchange Data or discuss it to any degree with employees of the Department of Defense except after fulfillment of complicated and cumbersome procedural prerequisites.

b. Our proposal of 17 January 1958 was in the form of an amendment to Sec. 143 of the Atomic Energy Act. It would bring CIA under provisions now applicable to the Department of Defense and the National Aeronautics and Space Administration, in essentially the same terms. It would authorize the utilization of our own investigative facilities in connection with Restricted Data clearances, would allow the Central Intelligence Agency to grant the actual clearances for access to Restricted Data, and would provide for mutual exchange of Data with persons holding appropriate clearances from the Atomic Energy Commission or the Department of Defense.

c. On 4 August 1958, having received no answer to the 17 January letter, we again wrote the Commission indicating our great interest in this matter and calling attention to the passage of the National Aeronautics and Space Act, which had been approved on 29 July 1958, and which contained authorities quite similar to those we sought.

d. On 7 August 1958, the Chairman of the Atomic Energy Commission wrote expressing his regret for the delay and proposing immediate discussions between legal and security representatives of the two agencies. A meeting was held on 27 August 1958, at which Atomic Energy Commission representatives indicated that they favored an approach which would permit certain other agencies of the Government to conduct the necessary investigations but leaving to the Atomic Energy Commission the actual discretion to grant the clearances.

e. At our request, the Office of General Counsel of the Atomic Energy Commission made available to us a copy of a draft proposal then up for consideration within the Commission. This proposal followed the approach above. It required the submission of investigative reports to the Commission by the Agency conducting the investigation, it left to the Commission's discretion the granting of clearances, and, further, made no provision for the exchange of Data between persons otherwise granted appropriate access.

f. On 28 November 1958, before any further discussions had been conducted with the Atomic Energy Commission on this subject, the Bureau of the Budget forwarded for our comments the Atomic Energy Commission's draft Omnibus Bill for 1959. Section 2 of the draft bill was a proposed amendment to Sec. 145 of the Atomic Energy Act of 1954. This was, for the most part, the same as the proposal sent to us in October.

g. The Atomic Energy Commission proposal, although eliminating the duplication of investigations, left the granting of Restricted Data clearances within the purview and the discretion of the Commission. Taken as a whole, the proposal allowed the Commission to make whatever review of investigative reports or files or even the investigative process it deemed necessary prior to determining whether or not to grant the clearances. In addition, the proposal made no provision for exchange of Data and it therefore remained uncertain how narrowly the Commission would construe such legislation in formulating procedural requirements limiting access for our cleared employees to Restricted Data in the possession of other agencies. The proposal was among those provisions of the Omnibus Bill not acted upon favorably by the Congress.

7. Coast Guard Proposal

On 9 October 1959, there were transmitted to the Senate and House of Representatives by the Secretary of the Treasury proposed bills to "amend Section 143 of the Atomic Energy Act of 1954, as amended, to grant access to Restricted Data to Coast Guard personnel on the same basis as such access is granted to certain personnel of agencies of the Department of Defense" There follow excerpts of the letter to the President of the Senate transmitting the draft bill:

"The purpose of this proposal is to amend the Atomic Energy Act of 1954, as amended, so as to authorize the Commandant of the United States Coast Guard to grant access to Restricted Data to personnel of the Coast Guard, military and civilian, to the same extent as the head of an agency of the Department of Defense currently is authorized to do with respect to persons employed within the Department of Defense or employed by its contractors. The Secretary of the Treasury would determine beforehand the adequacy and conformity of established Coast Guard personnel and other security procedures and standards to those standards established by the Atomic Energy Commission. The proposal would also include authorization for cleared personnel to exchange Restricted Data with other personnel within the Coast Guard or the Department of Defense who possess the same security clearance.

"This legislative proposal has been prompted by the increasing needs of the Coast Guard to expedite determination of eligibility of its personnel to have access to Restricted Data and to remove a currently existing costly duplication of administrative effort"

The reasons now advanced by the Coast Guard for this legislation are precisely those held by this Agency from the time of its initial proposal in this field.

SECRET

17 MAY 1954

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Restricted Data Clearances

1. The attached memorandum to the Director of Central Intelligence, together with background material, has been reviewed, and there are no objections insofar as contents are concerned.

2. In view, however, of the previous discussions and correspondence with the Bureau of the Budget and the Joint Committee on Atomic Energy, it is suggested that, rather than initiating discussions at this time, the Agency forward proposed legislation.

3. As you are aware, proposals have been made at various times by this Agency, the Atomic Energy Commission, and other agencies to permit access to Restricted Data without the necessity of further investigation. These proposals have been designed to permit such access either under the provisions of Section 143 or Section 145 of the Atomic Energy Act of 1954, as amended.

4. Prior to submitting proposed legislation, it is felt advisable to reach a firm decision as to whether this Agency would prefer to be granted access under Section 143 or Section 145. In this connection it is believed more advantageous to be granted clearances under Section 145, provided the necessary provisions are made with respect to exchange of Restricted Data, since the clearances under Section 145 are in most instances less restrictive than those under Section 143.

5. With regard to clearances under Section 145, it would of course, be preferable to have such clearances granted by this Agency on the basis of our own review of investigative files together with a certification to the Atomic Energy Commission. However, as an alternative, this Office would have no objection to the legislation previously proposed by the Atomic Energy Commission, whereby the Commission would grant clearances on the basis of its review of our investigative files.

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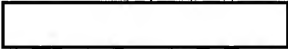
6. The next alternative would be clearances under the provisions of Section 143, in which case it is felt that the proposed legislation submitted to the Atomic Energy Commission on 17 January 1958 would be preferable to merely having this Agency included under the present terminology of Section 143. In view, however, of the Commission's insistence upon requiring requests in each instance where access is permitted under Section 143, it is felt that perhaps the proposed revision to Section 143 should specifically provide for the granting of continuing access.

7. In view of the above, it is suggested that your Office review the advantages and disadvantages of inclusion under Section 143 or Section 145 and draft proposed legislation, subject to the Director's approval, for submission to the Bureau of the Budget and the Joint Committee on Atomic Energy.

8. If you would care to discuss this further, please advise.

STAT

SIGNED


Acting Director of Security

Attachment:

Mem to DCI, together
with background material

SECRET

19 February 1960

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Restricted Data Clearances

REFERENCE : Memorandum from Acting Director of
Security to Legislative Counsel, dated
17 February 1960 (S)

1. I concur strongly with your recommendation to attempt to get legislation permitting the granting of Agency Restricted Data clearances based solely on Agency investigation.

2. However, I am inclined to go along with the proposal of the Office of Security that it would be appropriate to forward immediately the proposed legislation rather than just initiating discussions. It is my impression that we have already had sufficient discussions on this subject.

3. This Office is not qualified to choose between whether the authority should be derived under Section 145 or Section 143; but if Section 145 is less restrictive, I would be in favor of that Section. It would be important to insure that any Agency certification would apply to continuing access in order to reduce the paper work which would be involved if certification were required for each exchange of Restricted Data.

4. I would also prefer the procedure which involves a CIA review of the investigative files together with a certification to the Atomic Energy Commission rather than having the AEC review our investigative files since the former would appear much simpler and quicker.

MAY 52 10 10 AM '60

HERBERT SCOVILLE, JR.
Assistant Director
Scientific Intelligence

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MEMORANDUM FOR: THE DIRECTOR

Attached are two memoranda recommending action concerning an Executive Order permitting CIA to exchange Restricted Data and the introduction of legislation permitting CIA to certify on its own authority its employees for access to Restricted Data.

The memorandum with respect to the Executive Order recommends that you speak to Mr. McCone with the view that we might finally get favorable action.

The memorandum on the legislation recommends that we initiate discussions looking toward introduction but I would now add the

MEMORANDUM FOR: **THE DIRECTOR**

recommendation that you also discuss this matter with Mr. McCone. In any event, we would like approval to prepare and present to the Bureau of the Budget appropriate legislation.

s/ **John S. Warner**

JOHN S. WARNER
Legislative Counsel

(DATE)

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

(47)

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| CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP | | | |
| TO | NAME AND ADDRESS | INITIALS | DATE |
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| 2 | <i>[Handwritten Signature]</i> | <i>[Handwritten Signature]</i> | |
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| APPROVAL | | DISPATCH | RECOMMENDATION |
| COMMENT | | FILE | RETURN |
| CONCURRENCE | | INFORMATION | SIGNATURE |
| <p>Remarks: STAT</p> <p>STAT Per the attached note from [] I have talked to [] in Pete Scoville's absence and with Larry Houston. We believe the following should be at a luncheon with McCone to discuss this matter: Director, Deputy Director, Amory, Scoville, [] Houston and Warner. I would recommend - consistent with the Director's timing - the luncheon be established for some time next week. STAT</p> <p style="text-align: right;">[] John S. Warner</p> | | | |
| FOLD HERE TO RETURN TO SENDER | | | |
| FROM: NAME, ADDRESS AND PHONE NO. | | | DATE |
| Legislative Counsel - 221 East Bldg. | | | 16 March |
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| Remarks: John: The Director did not wish to sign the attached two memoranda at this time. He stated that he would rather get John McCone over here for lunch sometime with Pete Scoville, General Cabell, and probably Larry Houston, and discuss these problems with him at that time. Will you please check with Pete and Larry on this to see who should be present at the luncheon and then return this material to me so that I can attempt to set up a definite date between the Director and Mr. McCone. | | | |
| FOLD HERE TO RETURN TO SENDER | | | |
| FROM: NAME, ADDRESS AND PHONE NO. | | | DATE |
| Acting EO/DCI/ [] | | | 15 Mar 60 |
| UNCLASSIFIED | | CONFIDENTIAL | SECRET |

FORM NO. 1 APR 55

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Replaces Form 30-4 which may be used.

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